

BOARD OF ZONING APPEAL FOR THE
CITY OF CAMBRIDGE

April 16, 2009

7:00 P.M.

in Senior Center

806 Massachusetts Avenue
Cambridge, Massachusetts 02139

Constantine Alexander, Chair

Tim Hughes, Vice Chair

Mahmood Firouzbakht, Member

Tad Heuer, Member

Brendan Sullivan, Member

Slater Anderson, Member

Sean O'Grady, Zoning Specialist

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P R O C E E D I N G S

(7:10 P.M.)

(Sitting Members: Constantine Alexander, Tim Hughes, Mahmood Firouzbakht, Tad Heuer, Brendan Sullivan.)

CONSTANTINE ALEXANDER: We're going to call this meeting to order officially. And the first case is a continued case, case No. 9761, 120 Rindge Avenue and 45-47 Yerxa Road.

Is there anyone here who wants to be heard on this case?

ATTORNEY JAMES RAFFERTY: Thank you. Good evening, Mr. Chairman. James Rafferty on behalf of the applicant.

We have filed a request to continue the case. The Board might allow -- you were gracious enough to continue the case as a case not heard last time. And that afforded the petitioner an opportunity to meet twice, once with the neighborhood

association and a separate meeting that he hosted on Monday night. It was at the suggestion of the neighbors at the Monday night meeting that it was agreed that Mr. Peroncello would seek a continuance, address some of the issues frankly unrelated to the variance but which are a source of concern around the construction. The thinking was that if he -- in order to have a meaningful conversation, it was necessary for him to address some issues of longstanding concern. So he has committed to do that. That work is underway.

I have informed the neighbors, counsel for one of the neighbors, as well as the head of the neighborhood association of the request for the continuance. And I'm not aware of any objection to it.

CONSTANTINE ALEXANDER: I have a question. As far as you know, the

neighborhood -- because the last time as you know, the neighbors were not very happy about continuing this case.

ATTORNEY JAMES RAFFERTY: I think in fairness to them, they had requested a continuance. And he at that time wasn't consistent -- his thinking wasn't consistent with theirs. So they had the inconvenience of having to come here.

CONSTANTINE ALEXANDER: Right.

ATTORNEY JAMES RAFFERTY: And then he decides to continue. I don't believe -- we've avoided that situation because everyone knows about it. And in fact in this instance, it was at the suggestion of the neighbors at the Monday night meeting. So I believe -- I'm not aware of anyone who feels otherwise.

CONSTANTINE ALEXANDER: Sean, are you aware of any letters in the file on this?

SEAN O'GRADY: No.

CONSTANTINE ALEXANDER:

Mr. Rafferty is requesting the continuance, but I don't see, quickly looking at it, anybody who's opposed to the continuance.

SEAN O'GRADY: No.

CONSTANTINE ALEXANDER: There are people opposed to the -- well, I mean, at the last meeting we were concerned about having the neighbors being inconvenienced of coming back down again. If the neighbors are not worried about not being inconvenienced --

ATTORNEY JAMES RAFFERTY: I don't believe any are here. But I could be wrong.

CONSTANTINE ALEXANDER: Well, that's the best indication of all.

ATTORNEY JAMES RAFFERTY: Well, that's what I mean --

CONSTANTINE ALEXANDER: I make that observation. I think that people are

speaking with their absence by not being here.

When would you like the case continued to?

ATTORNEY JAMES RAFFERTY: The second hearing in May -- if there was any opportunity in May. I think the thinking was he needed a few weeks to attend -- now that the weather is cooperating, he could do some landscaping and fencing and those type of issues. We had hoped within a month or so. I know you have a 14th and 28th hearing in May.

SEAN O'GRADY: Yes, the 14th and the 30th is closed and we also have April 30th if that's attractive at all.

ATTORNEY JAMES RAFFERTY: I think he could benefit with a little more time. If May 14th is available, I know that would -- I discussed that with the neighbors knowing what the schedule was and there was general support for that

date.

CONSTANTINE ALEXANDER: Any members of the Board have questions or comments?

I'll make a motion that this case be continued until seven o'clock p.m. on May 14th on the condition that the sign be modified to reflect the new date.

All those in favor of carrying the case.

(Show of hands.)

CONSTANTINE ALEXANDER: Five in favor.

(Alexander, Hughes, Sullivan, Heuer, Firouzbakht.)

CONSTANTINE ALEXANDER: If you're going to revise your plan as a result of the conversation with the neighbors, just reapply.

ATTORNEY JAMES RAFFERTY: And you have a signature?

SEAN O'GRADY: Yes. There should

be a waiver.

ATTORNEY JAMES RAFFERTY: I'm sure there was.

CONSTANTINE ALEXANDER: All set.

(Whereupon, a discussion was held off the record.)

(7:30 P.M.)

(Sitting Members: Constantine Alexander, Mahmood Firouzbakht, Tad Heuer, Tim Hughes, Brendan Sullivan.)

CONSTANTINE ALEXANDER: The Chair will call case No. 9763, 628 Green Street. Anyone here on that petition?

Please come forward. Give your name and please spell it for the stenographer and also your address, please.

ATTORNEY RICHARD GALLOGLY: My name is Richard Gallogly. I am with the Boston law firm of Rackemann, Sawyer and Brewster representing the O'Connells.

We have submitted a request for an extension of the public hearing. The O'Connells are not able to be here this evening, nor the attorney that's been handling this case. I'm a substitute for him as well this evening. I think we faxed in today a copy of the new extension form request.

CONSTANTINE ALEXANDER: We have one in the file. Yes, there is. This is the waiver for us to render a decision.

ATTORNEY RICHARD GALLOGLY: Yes.

CONSTANTINE ALEXANDER: Is there a date you would like to have the date extended to? Or what's our first available date?

SEAN O'GRADY: May 14th is what we're looking at.

CONSTANTINE ALEXANDER: Do you want to go to then?

ATTORNEY RICHARD GALLOGLY: May 14th is fine.

CONSTANTINE ALEXANDER: Is there anyone here who wishes to be heard on the motion to continue?

(No response).

CONSTANTINE ALEXANDER: I see no one wishes to be heard. Anyone on the Board who wishes to comment? Ready for a motion.

The Chair moves that this case be continued until seven p.m. on May 14th on the condition that the sign posted outside be modified to show the new date to May 14th.

ATTORNEY RICHARD GALLOGLY: Okay.

CONSTANTINE ALEXANDER: The Chair notes that there is already in the file a waiver at the time of the decision as submitted by the petitioner, on behalf of

the petitioner.

All those in favor of continuing the case, so moved, say "Aye."

(Show of hands).

CONSTANTINE ALEXANDER: Five in favor. Case is continued to May 14th.

(Alexander, Hughes, Sullivan, Heuer, Firouzbakht.)

(Whereupon, a discussion was held off the record.)

(7:45 P.M.)

(Sitting Members: Tim Hughes, Slater Anderson, Brendan Sullivan, Tad Heuer, Mahmood Firouzbakht.)

TIM HUGHES: The Board will hear case No. 9764. Anyone here on that case?

Please identify yourself for the record and spell your last names. Spell your whole name.

ATTORNEY KEVIN CRANE: My name is Kevin Crane, C-r-a-n-e. I'm an attorney for the petitioner. My office is located at 104 Mount Auburn Street in Cambridge. I have with me Arthur Spears, S-p-e-a-r-s who's the president of the East Cambridge Savings Bank.

ARTHUR SPEARS: 292 Cambridge Street, if you need that.

TIM HUGHES: Could you lay out for us what it is you're asking?

ATTORNEY KEVIN CRANE:

Mr. Chairman, Members of the Board, we are asking relief from a previously granted variance that was granted five years ago to operate a fast food order establishment, Dunkin' Donuts, at this particular location. The proposal involves -- and I think you all have plans.

TIM HUGHES: There's a bunch of them here.

ATTORNEY KEVIN CRANE: It's just one plan with a bunch of copies here.

The proposal is to install an ATM machine facility in the location that was previously used for a Baskin Robins facility. The chests for the ice cream have been removed, and there's approximately 95 square feet that the ATM machine facility would be located. If

you're familiar with the site, the -- there are two doors, one on the Mass. Avenue sidewalk side and a second one from the parking lot. The access from the parking lot, the ATM machine will be just to your immediate left. The present door is -- there's an inside door in the vestibule as well which is a 45-degree angle, which on the floor plan here in the upper left it shows that door existing, and that will be removed. If you move to your right where the proposed floor plan is, there will be a new door installed straight from the door that you come in from the parking lot. And then there will be a wall constructed, which on the plan on the upper right is denoted "new storefront" which would be a bit of a misnomer there because it's not actually a storefront. It's inside the building. And that will demarcate the ATM machine facility from the Dunkin' Donuts'

facility.

The -- because the -- there was a previously granted variance, the Inspectional Services Department and the City Solicitor's office took the opinion that we should request the Board for a modification of the previously granted variance even though the bank use is a permitted use as a matter of right. Ironically, if my client was buying the building to open up a branch facility, there would be no need for relief. We have a number of signatures that are in support of the petition. They've been in the store. There's 228 of them. You want those?

TIM HUGHES: Sure.

It's my understanding that because of some language in the original variance that it said that it had to be built to exact specifications or exact plans, that's why the variance is necessary now.

It's not -- like you said, the use is conforming.

ATTORNEY KEVIN CRANE: Yes.

TIM HUGHES: But because of some existing language that said you had to build it a certain way. And now that you're changing that, we're looking for a variance?

ATTORNEY KEVIN CRANE: It's a little bit -- not quite on that score. The analysis, from what I understand from Don Griswold the solicitor's office, the staff thought that when the Board of Zoning Appeal was granting the original fast food variance, that they might have analyzed that original grant a little bit differently if it was a Dunkin' Donuts with an ATM machine. So that's really why we're here. That the analysis back then might have been different if this use was proposed at that time.

SEAN O'GRADY: Sounds fine.

ATTORNEY KEVIN CRANE: And there's going to be no change to the outside of the building at all except for there will be one additional exterior light which would be over the door that you would enter from the parking lot. The light is similar to the lights that are presently on the back of the building.

TIM HUGHES: Questions from the Board?

ATTORNEY KEVIN CRANE: I also have a couple of letters from abutters in support of it.

One is from Frank Mazeo who owns the property at 911 Edmund Street. The other one is from Dolores Costa who lives and owns 15 Edmund Street. And also from her tenant as well. I can't make out what her name is exactly.

BRENDAN SULLIVAN: I guess the only question I would ask, Mr. Chairman, is I notice that there was nothing

indicating signage. How you're going to identify the ATM? So if you can address that.

ATTORNEY KEVIN CRANE:

Mr. Chairman, I'll give you the sign -- there is a little bit of a controversy swirling about the sign. And the facts are these: My client was issued a building permit for a sign in February of this year. It was a permit issued by the Inspectional Services Department. The sign is 14 feet high, nine feet to the bottom of it, and then the sign's five feet by five feet.

BRENDAN SULLIVAN: Do you have anything in the file, there?

ATTORNEY KEVIN CRANE: I don't, Mr. Chairman.

But there was something -- there were plans submitted with that application, and Mr. Barber from the Community Development Department reviewed

those plans and he signed off on the issuance of the building permit for the sign. Then we filed this petition and there was some rethinking within the Inspectional Services Department as to whether the sign could -- the building permit for the sign was appropriately issued. And there was a review of the -- and I actually had asked Les Barber, and I called him and asked him because I wanted him to be aware that there might be an issue involved with the sign. And he said that he had reviewed -- there wasn't one that he had given any thought to -- he had reviewed it in conjunction with the sign ordinance, Article 7. And based on the standards in that article of the ordinance he issued the permit.

There was then some rethinking done on the issuance as it related to the prior zoning decision. And the prior zoning decision, which was five years ago, has a

condition on it. It's condition No. 8 which refers to a private agreement between the petitioner at that time, Dunkin' Donuts developer, and the immediate abutter, Charles Teague (phonetic). And the decision states that as far as that agreement is within the purview of the Board of Zoning Appeals, that it would be -- the terms of that agreement would be a condition of that variance. That agreement then, which is dated March 25, 2004, within it refers to -- let me be exact on that. It states that signs limited in size, number and style lighted from front as represented in January 14th community meeting. Whatever that is.

BRENDAN SULLIVAN: Would that not have been the plans that were going to be presented to the Board?

ATTORNEY KEVIN CRANE: This is January 14, 2004.

BRENDAN SULLIVAN: Okay. But was there not any plans presented at that meeting?

ATTORNEY KEVIN CRANE: I do not know what was presented. That was over five years ago.

BRENDAN SULLIVAN: It references something I guess, but we're not sure what that document is.

ATTORNEY KEVIN CRANE: That's right. That's right.

And then subsequent to that, there was some litigation between the Dunkin' Donuts developer and the abutter who are the two parties to this agreement, which the BZA incorporated into their decision. And that litigation ended up with the abutter, one of the parties, right? Signing off that the agreement was canceled and rendered null and void. The discussion the last week between myself and Ranjit and the City Solicitor's office

is that whether that agreement, the canceled, the March 25th agreement, affected the condition that the Board of Zoning Appeals had placed on it. The City Solicitor is taking the position that it could not affect the condition of the variance because the city was not a party to the cancellation. I would agree with him quite frankly, that I don't think the city would be bound by the two parties agreeing to nullify this agreement. But then we go back to what is the standard? Is it -- there has to be some standard for the issuance of a sign. Is it Article 7 as is presently written? Or is it what has happened at this January 14, 2004 community meeting? I would also question if that is the standard, whether that comes within the zoning purview of the Board of Zoning Appeals being -- or whether it was even an improper delegation of zoning enforcement to private entities.

Ranjit has now sent me a letter today saying that he is revoking the sign permit that was issued based on the party -- the city not being a party to the cancellation. I'll have to discuss that further with him and with Mr. Driscoll. And we might be back here in some form or another regarding the sign.

BRENDAN SULLIVAN: Okay. Well, that's sort of getting curiouser and curiouser.

ATTORNEY KEVIN CRANE: Yes, it is, Mr. Sullivan.

BRENDAN SULLIVAN: Okay.

ATTORNEY KEVIN CRANE: I have the old decision and the old agreement if you want it.

BRENDAN SULLIVAN: And I sat on the original case.

ATTORNEY KEVIN CRANE: I think you did.

BRENDAN SULLIVAN: And I'm just

wondering more so that there was a tremendous amount of discussion over more than just one meeting, and it had to do with the visual of the site as well as the purpose of the site and what have you. And I know that signage was a big part of it. But I'll let the rest of the thing go on anyhow.

ATTORNEY KEVIN CRANE: When I reviewed the old file yesterday, I did not find any plan regarding the sign at all.

TIM HUGHES: Any more questions from the Board?

TAD HEUER: I have a few.

So you'd be willing to have the ATM without the sign if it comes to it? These aren't tied to one another, the issue that we have in front of us tonight, and any future issue that may or may not come up regarding the size of the sign; is that correct?

ATTORNEY KEVIN CRANE: No. Now,

we would have an issue with the sign.

TAD HEUER: Correct.

ATTORNEY KEVIN CRANE: Depending on what happens with my discussions with the City Solicitor's office and Inspectional Services. The sign is critical to my client's operation of the ATM. They don't make any money on the ATM facility. And it's a customer service type thing for their existing customers. There's also no -- there is no ATM machine on that side of Mass. Avenue from the Arlington line down to Rindge Avenue. But without a sign, they -- it might not be worth their while to do. They tried to have the signs inside but -- at first, but Dunkin' Donuts would not permit that.

TAD HEUER: So if the project -- what I'm hearing you say, the project might not go ahead without a sign, and the sign isn't in front of us tonight.

ATTORNEY KEVIN CRANE: That's

right.

TAD HEUER: Is there -- I'd be interested in the sense of the other members whether we would just be proceeding on granting a variance for something that may not come to pass or whether we're doing it because it would be as of right without the pre-existing ordinance? It just seems to me that when they --

BRENDAN SULLIVAN: Well, the sign is the integral part of the proposal, the sign is not before us. It's hard to go forward without the integral part.

SLATER ANDERSON: Could you indicate to me where the sign would likely go? The sign that you have, I guess, the revoked permit for? This is the ATM anyway.

ATTORNEY KEVIN CRANE: Yes. This is not a good spot on this -- it would go -- that's the door that you go in from the

parking lot.

SLATER ANDERSON: Yeah.

ATTORNEY KEVIN CRANE: Okay?

And this is the driveway. The door -- I mean, the sign would be down here.

SLATER ANDERSON: It's not attached to the building?

ATTORNEY KEVIN CRANE: That's right. It's a free standing.

SLATER ANDERSON: It's a free standing -- okay. What's the height of the sign?

ATTORNEY KEVIN CRANE: The height is 14 feet.

SLATER ANDERSON: You're telling me the sign is conforming aside from -- conforms to the sign regulations. But other than the variance issue, we have preexisting variance --

ATTORNEY KEVIN CRANE: That's right.

SLATER ANDERSON: -- is the

question.

ATTORNEY KEVIN CRANE: That's right.

SLATER ANDERSON: But otherwise it's a conforming sign?

ATTORNEY KEVIN CRANE: That's right.

SLATER ANDERSON: But we don't have any representation of the sign here tonight?

ATTORNEY KEVIN CRANE: No.

And I would have -- you know, I would have probably asked the Board if I knew this sign issue was to the point where it is just today, I would have asked the Board to modify the old variance, you know, to lead that condition, Condition 8 about the private party if there was a sign-off by one of the parties.

TIM HUGHES: I don't have a problem with us moving forward on the variance that's stated in tonight's

agenda. The sign being that, you know, something that can be figured out later if it's necessary. Because we're not sure that the Building Department won't reissue another permit.

ATTORNEY KEVIN CRANE: That's correct.

TIM HUGHES: Once they believe that Section 8 has been put to -- Section 8. Has been put to rest, you know, from the old variance. It may not take an action from us for that.

ATTORNEY KEVIN CRANE: That's right, it might not.

MAHMOOD FIROUZBAKHT: I guess if we take any actions based on the plans before us which don't include a sign, then all we would be approving or not approving would be this as proposed without the sign.

TIM HUGHES: We'd be approving the build out inside the building itself,

exactly.

MAHMOOD FIROUZBAKHT: Right. And if they, if the applicant, for whatever reason, administratively or through the Board process has not granted the approval for a sign, then I guess that's ultimately their decision as to whether they want to move forward with, you know, with this project or not.

ATTORNEY KEVIN CRANE: That's correct.

TAD HEUER: Does adding the ATM in the space that it's going to take up, does that do anything to the fast food order in terms of seating space, anything else that would affect the existing?

ATTORNEY KEVIN CRANE: There's one table that would be moved.

TAD HEUER: Okay.

What do you have in terms of expected traffic with the ATM? In terms of the foot traffic -- is it foot traffic?

Is it automotive traffic? What do you expect to be --

ARTHUR SPEARS: Foot traffic.

TAD HEUER: Foot traffic.

In terms of servicing, I don't want you to give away your delivery times, but many people are interested in our transcript. But is it a weekly kind of thing? What kinds of traffic would it be needed to service either, you know, for the armored cars in terms of any kind of maintenance --

ATTORNEY KEVIN CRANE: I think for -- I think it's one cash delivery, maybe two a week at most. And the number of hits which is, you know, is speculative, I think on the lines of 100 hits a day.

TAD HEUER: And it will be open 24 hours?

ATTORNEY KEVIN CRANE: Yes.

TIM HUGHES: Anything else?

Slater?

SLATER ANDERSON: Was there any -- well, we're not going to discuss the sign.

ATTORNEY KEVIN CRANE: We met with the North Cambridge Stabilization Committee last Wednesday night.

SLATER ANDERSON: Yes.

ATTORNEY KEVIN CRANE: And I don't want to speak for them, but my sense was that there was no problem with the ATM facility. Some people had questions about the signs.

TIM HUGHES: Let the record show that the petitioner submitted some 17 or 18 pages of a petition in support of the ATM. About 15 names on each page.

There's also three letters in support of abutters on Edmund Street. Frank Mazeo, Dolores Costa and what appears to be Sue Fitz.

Any more questions from the Board before I open up to public comment?

Is there anyone that would like to speak in favor of the ATM at the Dunkin' Donuts at this address?

(No response).

TIM HUGHES: Is there anyone interested in speaking against this one or has concerns or questions?

(No response.)

TIM HUGHES: Seeing none, we'll close public comment.

Are we finished? Do we have any more questions for them? We're ready to frame this?

The Board would move that the variance be granted at 2472-2482 Mass. Avenue to put in an ATM machine and modify the existing variance which established this as a strictly fast food establishment.

The Board finds that a literal enforcement of the ordinance would involve a substantial hardship, financial or

otherwise to the petitioner.

The Baskin Robins element of the existing store is now not economically feasible and has been eliminated, and the ATM would add a facility that could provide some immediate income.

The hardship is owing to the site that was previously contaminated in its soil condition given the prior use was a gas station. And the present owner of the Dunkin' cafe has appropriately remediated such soil conditions, and the shape and the size of the lot constitutes at Mass. Ave. and Edmund Street, and the development of this site had limited potential without the building in its present format going in.

And there will be no change to the footprint of the building. There is only interior renovations being made to accommodate the ATM.

Is there anything else we need to

put on the motion?

All those in favor of granting --

SEAN O'GRADY: Condition. Just a condition that it be built according to the plans.

TIM HUGHES: Oh, okay.

The variance will be granted on the condition that the ATM section of this building were built according to the plans submitted by marked ATM storefront by DRL Associates and dated -- it shows the date on here someplace. Marked plan A-1 and dated --

SEAN O'GRADY: January 30th.

TIM HUGHES: -- January 30th.

Any other conditions that we need?

All those in favor of granting the variance.

(Show of hands.)

TIM HUGHES: Five in favor.

(Sullivan, Hughes, Anderson, Heuer, Firouzbakht.)

ATTORNEY KEVIN CRANE: Thank you,
Mr. Chairman, Members of the Board.

PETITIONER: Thank you Members of
the Board.

(Whereupon, a discussion was
held off the record.)

(8:10 P.M.)

(Sitting Members: Constantine Alexander,
Tim Hughes, Brendan Sullivan, Tad Heuer,
Mahmood Firouzbakht.)

CONSTANTINE ALEXANDER: The Chair
will call case No. 9765, Seven Broadway
Terrace.

Is there anyone here on that case?
Please come forward.

We're keeping a transcript. Please
give your name, spell it and your address,
please.

STEVEN RECKHOW: I'm Steven
Reckhow. Steven with a V. Reckhow,
R-e-c-k-h-o-w.

SYLVIA WHEELER: And I'm Sylvia Wheeler, S-y-l-v-i-a W-h-e-e-l-e-r. We are husband and wife. We live at 305 Harvard Street in Cambridge, 02139.

CONSTANTINE ALEXANDER: Sir, the floor is yours.

STEVEN RECKHOW: Our petition is about a three-family house at Seven Broadway Terrace. We're asking to restore the front porches which were part of the original structure. They were taken down at the end of the second world war when they put the asphalt siding on, and a common thing to happen in the neighborhood. And apparently the reason we have to be here is that putting back what was there originally constitutes a change in the FAR. We've --

CONSTANTINE ALEXANDER: Yes. To be precise, I think there are two issues from a zoning point of view.

You're going to go from an FAR,

you're going to go from 1.72, according to your dimensional form, to 1.81. And the district has a maximum of .75. So the building right now is substantially over and you want to increase it a little bit more.

STEVEN RECKHOW: Right.

CONSTANTINE ALEXANDER: Also you have a setback issue. According, again, to your dimensional form. You have on the left side, you're supposed to have a 14 foot setback, and today the building's only 6.4 feet from the side. And you're going to reduce that to 6.16 feet. And that's the relief that's being asked.

STEVEN RECKHOW: And for more on the specifics of, you know, the dimensions and stuff, Steve Hiserodt from Boyce Watson is here to, you know, help us out with the details.

SYLVIA WHEELER: Help us with the details.

STEVEN RECKHOW: Fundamentally on the front porch after we acquired the place, we found out that there was indeed the -- there were three front porches there originally, and now there's just the partial first floor porch. When they put the asphalt siding on, they actually took portions of the trim of the original porch and used them to board up the doors on the second and third floor and hid them behind the asphalt siding. So when we started to pull off the asphalt siding, what we found was the original doors to the porch boarded up by pieces of the trim in the original porch. In doing the research with the Historic Commission, it appears that the porches are very similar to the ones at 366 Broadway, which was a contemporary three-family which has almost the identical floor plan and that's fundamentally what we would like to put back.

CONSTANTINE ALEXANDER: So you want to restore the historical integrity of the structure?

STEVEN RECKHOW: That's correct.

SYLVIA WHEELER: That's correct.

CONSTANTINE ALEXANDER: Not driven by safety concerns or what have you, or more space to rent the building out? You just want to make the building appear as it once did?

SYLVIA WHEELER: That's right.

CONSTANTINE ALEXANDER: And this is a non-conforming structure. The structure was built before we had the zoning ordinance?

SYLVIA WHEELER: That's right. It was built in 1912. This has been approved, our approach of this by the Cambridge Historic Commission.

CONSTANTINE ALEXANDER: You mentioned that, right.

Questions from members of the Board?

MAHMOOD FIROUZBAKHT: Will this be a rental? What's the use?

STEVEN RECKHOW: It's -- it was -- historically has always been a three-family, and it will still be a three-family. We've done a couple of three-family projects also that are very similar. Also had asphalt siding. And we've kept them as rentals. It's, you know, in this market, we can't -- you know, we're going to do the same project either way. We live about 300 feet away from this. We've been there for 20 years. This is, you know, stuff that we think is important for the neighborhood.

SYLVIA WHEELER: Important for the integrity of the neighborhood.

STEVEN RECKHOW: This is kind of like the key property on the block. It's, you know, nothing's happened to it, you know, since they put the asphalt siding on. And we think that putting it back is,

you know, an important part of getting the neighborhood back together.

MAHMOOD FIROUZBAKHT: I'm assuming as part of restoring the decks you're also doing significant work on the exterior?

STEVEN RECKHOW: Yeah. It's a complete restoration of the entire building. So yes, inside and out. The perimeter of the building stays the same.

SYLVIA WHEELER: We are modernizing the interior spaces, yeah, absolutely.

CONSTANTINE ALEXANDER: And the plans that you want to proceed on are the plans in the file? These are still the plans?

STEVEN RECKHOW: Yes.

SYLVIA WHEELER: What is the date on those?

CONSTANTINE ALEXANDER: They're dated 4/8/09.

SYLVIA WHEELER: That's right.

STEVEN RECKHOW: Yes.

CONSTANTINE ALEXANDER: If we approve it, we do it on the condition that you build in accordance with the plans. So that if you're going to modify them, you have to come back before our Board. I want to make sure you understand these are the final plans?

SYLVIA WHEELER: Yes, we understand.

STEVEN RECKHOW: Yes.

CONSTANTINE ALEXANDER: Okay.

TAD HEUER: And the porches are going to be built in the same footprint as the existing stairwell, is that about right?

STEVEN RECKHOW: They're a little bit different.

TAD HEUER: Because you're pulling to the left side; is that right?

STEVEN RECKHOW: Yes.

SYLVIA WHEELER: Yes.

STEVEN RECKHOW: So they wouldn't go quite as far to the street I guess overall because of the way the stairway originally went.

TAD HEUER: Right.

STEVEN RECKHOW: But the platform of the deck would go about a foot farther. But....

TAD HEUER: Okay.

STEVEN RECKHOW: Laterally, it would be the same.

TAD HEUER: And where, this is semantics but where is Lee Street in relation to --

STEVEN RECKHOW: Yes, where the heck is Broadway Terrace? It's a one block private way that goes between West Street and Broadway.

TAD HEUER: Right.

STEVEN RECKHOW: And it runs parallel with Lee Street and Inman Street.

SYLVIA WHEELER: It's a little --

CONSTANTINE ALEXANDER: There's Broadway Terrace. And then Lee Street over here. You're coming down from Harvard Square.

TAD HEUER: Right.

So the only reason I ask is I saw in the original subdivision deed that there's a provision that appears to describe construction any nearer to the Lee Street side. So I wanted to make sure you weren't on the Lee Street side.

SYLVIA WHEELER: No, that's the back of the building, that's right.

TAD HEUER: That's fine.

SYLVIA WHEELER: That's right.

TAD HEUER: As long as it's not toward the side that you plan to encroach upon.

And also you have the conditions from the Historical --

SYLVIA WHEELER: Yes.

STEVEN RECKHOW: Yes.

TAD HEUER: And are you planning on adhering -- I mean, they're advisory and recommendations. We can make them conditions of the variances we choose, but I just wanted to hear from you whether you're intending on meeting all of those?

STEVEN RECKHOW: Our intention is to make the exterior appear as much as like the original as we can. We're replacing all the windows.

TAD HEUER: Right.

STEVEN RECKHOW: We're going kind of a little bit over the top maybe in energy efficiency. We're going with triple glazed windows that are gonna look different from the, you know, the single glazed ones. But we're staying with the, you know, four over one original designs. The clapboards will be the same. The fluted columns that we see in the historical record would be there. The brackets that you can see around, you

know, the eaves would be the same.

CONSTANTINE ALEXANDER:

Mr. Heuer's question though, and it's one I wanted to ask as well. Your certificate of appropriateness that you got from the Historical Commission indicates that the work is supposed to be carried out in accordance with plans dated from Boyce Watson Architects dated September 26, 2008. We have a more recent --

SYLVIA WHEELER: Recent.

STEVEN RECKHOW: Yes.

CONSTANTINE ALEXANDER: Do these plans differ than the ones the Historical Commission saw? Are they any different from the ones you're showing us tonight?

STEVEN RECKHOW: Let me -- there was a discrepancy -- well, a problem that we saw in one facade with where the windows went. Where we interchanged a bathroom window with a living room window on -- that would be the south facade.

SYLVIA WHEELER: Which is not really visible from the street.

STEVEN RECKHOW: Yeah, it faces the -- that's the side with the -- I don't know, like an eight-foot clearance to a brick wall for the condos at 35 West Street. Interior, I think we changed the lay out of storage rooms, but....

CONSTANTINE ALEXANDER: That's not our concern. What you're saying is that the plans on September 26, 2008 are substantially the same as the plans --

SYLVIA WHEELER: Yes, definitely.

STEVEN RECKHOW: Yes.

TIM HUGHES: Nothing specifically as with regards to porches?

SYLVIA WHEELER: Yes, the porches are the same.

STEVEN RECKHOW: Those are the same, yes.

SYLVIA WHEELER: That's right, and they're relocating -- there isn't

anything.

CONSTANTINE ALEXANDER: Well, if you're going to address the Board, you have to come forward and give your name and the whole bit.

STEVE HISERODT: Steve Hiserodt with the Boyce, Watson Architect.

CONSTANTINE ALEXANDER: Do you have the spelling?

STEVE HISERODT: H-i-s-e-r-o-d-t.

There's a slight shift in some window locations on the left side elevation. That's the only thing that's changed.

CONSTANTINE ALEXANDER: That's it?

STEVE HISERODT: Yes.

CONSTANTINE ALEXANDER: We'll go back to Mr. Heuer's question, if we condition -- if we chose the condition of relief on the ground that you comply with the conditions that we got from the Cambridge Neighborhood Conservation

District, would that present a problem with you?

SYLVIA WHEELER: The only issue is one of -- they made an advisory, we had quite a discussion about the windows of their wanting us to have them be some specific thing. Here we go.

Install new six over one and four over one double hung sash windows, which we are doing. Weather recommendations to use wood windows with aluminum cladding. We have already purchased -- what is it?

STEVE RECKHOW: Well, they're vinyl.

SYLVIA WHEELER: They're vinyl. But they are -- we talked about it --

STEVE RECKHOW: They're the same design.

SYLVIA WHEELER: The same design and the same feeling of the old windows, but for energy purposes, because we really can't get triple glazed windows like this

for a reasonable -- any kind of reasonable price.

CONSTANTINE ALEXANDER: So if I can put words in your mouth. You're going to comply with these conditions in all material respects?

SYLVIA WHEELER: Yes. Thank you.

STEVEN RECKHOW: Yes. That's right.

SYLVIA WHEELER: They've -- the intent of this, of our whole project is to make it as historically consistent with -- as original appearance as possible, yes.

CONSTANTINE ALEXANDER: Any other questions from members of the Board?

BRENDAN SULLIVAN: Is there an apartment in the basement currently?

STEVEN RECKHOW: No.

BRENDAN SULLIVAN: That's --

STEVEN RECKHOW: It was a utility space and we intend to include that with the first floor unit.

SYLVIA WHEELER: It's one unit.

STEVEN RECKHOW: As --

BRENDAN SULLIVAN: Floor to ceiling? Floor to ceiling? Do you know what that is? Floor to ceiling height down there?

STEVEN RECKHOW: Eight feet.

BRENDAN SULLIVAN: Okay. I just noticed that part of the basement is now going to be part of the first floor unit.

SYLVIA WHEELER: First floor, that's correct.

STEVEN RECKHOW: That's correct.

BRENDAN SULLIVAN: I just wanted to make sure --

SYLVIA WHEELER: It does conform.

BRENDAN SULLIVAN: -- we're not granting relief for that and you don't require it?

STEVEN RECKHOW: No, no.

SYLVIA WHEELER: There's no need for that.

BRENDAN SULLIVAN: Okay, that's fine.

And some of the relief you're requesting is to enlarge some of those basement windows?

SYLVIA WHEELER: Yes.

STEVEN RECKHOW: Correct.

BRENDAN SULLIVAN: Which fall in some of the setbacks. Okay.

CONSTANTINE ALEXANDER: I'll open it up to public comment.

Does anyone wish to speak in regard to this petition?

Sir, please come forward, give your name and address to the Board.

STAN ROME: Hi. My name is Stan Rome. We have the property directly across from the front porches. There's a series of garages there. I'm not for or against. I just need some information to decide whether I should be for or against. This is the first time I've seen this this

evening.

I can't tell how wide the new porch is going to be. I know there's now room to park cars in front of the existing porch. I gather we won't lose that parking space.

STEVEN RECKHOW: Basically I guess the deck of the new porch would move out about a foot.

STAN ROME: So are you still going to try to put cars in front of that porch? Well, I mean here's my issue --

CONSTANTINE ALEXANDER: Yes.

STAN ROME: One, that street when it gets plowed, is tough. It works fine the way it is now just barely to get in and out of our garages. And if they move the porch out, and then they're still going to put cars there, I think it's gonna be an issue. I count six bedrooms. It seems to me that means a minimum of six cars that need to be parked somewhere.

And the parking space between the two buildings can hold what, four vehicles? And I mean I think six is minimal, because if you have a husband and wife in the same bedroom, they can both have a car. I mean, I don't know who's going to -- we're not going to see kids in these units I don't believe. It's not set up for a bunch of kids.

CONSTANTINE ALEXANDER: According to their application right now the property has two parking spaces. And they --

And you represent on the form that you're going to continue to have two parking spaces?

STEVEN RECKHOW: Right.

SYLVIA WHEELER: That's right.

STAN ROME: So what happens to everybody else? I mean, it's pretty congested.

CONSTANTINE ALEXANDER: Our zoning

requirement is actually three units, but this is a non-conforming situation. So they don't have to provide any more parking than the two that they now provide.

STAN ROME: Well, I do know that they're using more than two already. And I don't see how we're going to sell all these units if you're not going to provide parking. Where are the two, beside the building or in front of the building that you're seeing?

SYLVIA WHEELER: The side.

STAN ROME: And do you own the auction house, too? Or what was the auction house.

STEVE RECKHOW: (Nods head.)

STAN ROME: Okay, that was my understanding. So you're leaving two spaces in essence for that building or whatever.

CONSTANTINE ALEXANDER: Do you

want to see the plans? Mr. Sullivan points out if you look at the proposed site plan, you see the porch and where the driveway is and where the parking would be.

STAN ROME: Right. It's four spaces I guess. I just couldn't tell. On the existing I could tell what the dimensions were, but I couldn't tell on the new one what the dimensions would be. So it's only going to come out to another foot?

STEVEN RECKHOW: Basically, right.

STAN ROME: I guess my issue would be if they're going to park cars in here, I would be opposed to it. Because I just don't see how -- I mean, there's no other porches on that street that are of this scope. There were I'm sure at one time, but now, after all these years, I don't see where that's really a hardship case. Because the hardship's supposed to be on

the land, isn't it?

CONSTANTINE ALEXANDER: Right. Well, the plan that -- if we grant the relief, it will be in accordance with these plans.

STAN ROME: Yeah, I know.

CONSTANTINE ALEXANDER: These plans do not show any parking in front of the porch. So that if parking did occur, there could be a zoning issue that you could take up with the Inspectional Services Department.

STAN ROME: I think that was my main concern. Yeah, I mean, I think they're going to do a good job. They certainly put a lot of time and effort into it, but I do think the parking is going to become an issue on that street because it already is. And if you put that many bedrooms back into use, it's going to be an issue. I gather that you're saying that there's no requirement

in the zoning that there has to be any number of bedrooms when it's not in conformance?

CONSTANTINE ALEXANDER: Nothing to do with bedrooms, no.

STAN ROME: I mean, parking spaces.

CONSTANTINE ALEXANDER: Parking. The zoning code has a requirement for dwelling unit. And so typically if you were building a new three decker, you would have to -- and have three dwelling units, you would have to provide on-site parking for three cars, but not four cars or five cars. One per unit.

STAN ROME: Right. Well, I guess that's my main concern.

CONSTANTINE ALEXANDER: Well, again, as I said, there is a self-enforcement notion here in terms of the parking that is on-site that has to be in accordance with these plans. And if

the parking is not doing that in accordance to the plans, you have a right to go to the city.

STAN ROME: Right. Thank you.

CONSTANTINE ALEXANDER: Anyone else wishes to be heard on this petition?

Yes, please.

JULIA NUGENT: Hi. My name is Julia Nugent, N-u-g-e-n-t. I live at Four Broadway Terrace. I'm the only other house that's on Broadway Terrace and I just want to give my full support to the project. I think it will -- it's a huge improvement. That property is long due for a change. And I'm an architect and I appreciate what they're trying to do and I want to support it.

CONSTANTINE ALEXANDER: Thank you. Anyone else wishes to be heard?

(No response).

CONSTANTINE ALEXANDER: We have letters in the file that I'll make part of

the record. We have a letter from a Robert Winters at 366 Broadway.

To the Board: Due to my Thursday night teaching responsibilities I am unable to personally attend the BZA's meeting scheduled for April 16th so I would like to instead respectfully submit this letter. I am a direct abutter to the property in question. Indeed my building at 366 Broadway was built as the twin around the originally triplets, quote, paren, of Seven Broadway Terrace nearly 100 years ago. Our concerns regarding the property at Seven Broadway Terrace and at 364 Broadway, the former Hubley site, primarily focus on the future of the Hubley site which stands just a few feet away from our building and for which any changes would affect us substantially. However, in regard to the Seven Broadway Terrace property, we welcome the restoration of the front porches which

were brutally removed years ago. I've seen the proposed floor plans for the building which would relocate entryways in a sensible manner with no apparent detrimental effects on the residence of my building. I cannot speak to any of the other potential changes to the building, but I would like to comment that the restoration of the building at Seven Broadway has to date been relatively unobtrusive, and the owners and workers have been courteous and responsive to all the residents at my building. In particular our potential concerns about exterior utilities, such as exhaust fans and central air conditioning units appear to not be an issue as the plans call for the location on the opposite side of the building. Our cluster of buildings facing Lee Street, Broadway, and Broadway Terrace all have rear porches facing our abutting rear yards. And it is the nature of the

space that any and all sounds reduced in this rear yard area are plainly audible to all of the residents of these building, especially during the warm weather months when windows are open. To the best of my knowledge, nothing in the current application would do harm to the peace of this space and the rear of our respective properties.

There's a letter from a Kevin Glynn. I am writing in -- at 27 Lee Street. I am writing in support of restoring the original front porches at the property of Seven Broadway Terrace in Cambridge. As a neighborhood resident, I am all in favor of the improvement that this will make to the area. This historic feature is important to returning the building back to its original state.

And last is a letter from a Steve Kelly at 48 Robert Road. I understand that the owners of Seven Broadway Terrace

have a hearing this evening regarding the addition of front porches on the existing building. As a neighborhood resident, I would like to voice my support for the request as well as my support for the owners. For years they have been wonderful landlords and have made every effort to enhance the fabric of the neighborhood. I hope this e-mail is of assistance. Thanks for your consideration.

And those are the comments from the file.

Comments from members of the Board?

Ready for a vote?

The Chair moves that a variance be granted to the petitioner to enable them to rebuild a front porch which encroaches in front and side yard setbacks, to relocate openings and exterior walls that are non-conforming due to setback and increase non-conforming floor area ratio.

The variance would be granted on the basis that a literal enforcement of the provisions of this ordinance would involve a substantial hardship, financial or otherwise to the petitioner. And in this case the structure is a non-conformance structure that predates our zoning and zoning laws, and to literally enforce the setback and FAR requirements would affect the ability to renovate the structure as proposed.

The hardship is owing to circumstances relating to the floor conditions, shape or topography of such land and structures. In this case again we have a non-conforming structure, and the hardship will result from the fact that we have a non-conforming structure, and that relief may be granted without substantial detriment to the public good or nullify or substantially derogating the intent or purpose of this ordinance. In

fact, the relief would be promoting the public good in that you are going to restore the historical integrity of this older structure, and it will generally improve the condition of the neighborhood from an aesthetic and physical point of view.

This variance will be granted on the condition that the work proceed substantially -- and proceed in accordance and all material respects from the certificate of appropriateness granted by the Mid Cambridge Neighborhood Conservation District Commission, and that the work be done in accordance with the plans submitted by the petitioner prepared by Boyce Watson Architects dated 4/8/09. And it consists of a cover page, pages A-101, A-201, A-202, A-203, A-204, A-205, A-206, A-301, A-302, and A-401 and A-402 and A-403.

The Chair would further note by the

way that the purpose of the decision that there is -- there has been a certificate of appropriateness granted to the petitioner by the Mid Cambridge Neighborhood Conservation District Commission and that there is -- this project has substantial support from all abutters.

On that basis the Chair moves that a variance be granted.

All those in favor, please say "Aye."

(Show of hands.)

CONSTANTINE ALEXANDER: Five in favor. Motion is granted.

(Alexander, Sullivan, Hughes, Heuer, Firouzbakht.)

SYLVIA WHEELER: Thank you very much.

(Whereupon, a discussion was held off the record.)

(8:35 P.M.)

(Sitting Members: Constantine Alexander, Tim Hughes, Brendan Sullivan, Tad Heuer, Mahmood Firouzbakht.)

CONSTANTINE ALEXANDER: The Chair calls case No. 9766, 56 Fayerweather Street.

Anyone here who wishes to be heard on that petition?

(No response).

CONSTANTINE ALEXANDER: No one wishes to be heard.

I believe there's a motion to continue, Sean? There's a waiver. Let's see.

Well, we don't have anybody -- there's no formal request other than there's a waiver. I don't actually see a request for a continuance. But I think, I think it's safe to assume that since the waiver has been signed, that the petitioner wishes to continue the case?

SEAN O'GRADY: Yes. I can't imagine -- I'm fairly certain there was a letter for that.

CONSTANTINE ALEXANDER: I thought I saw a letter when I read the file earlier.

SEAN O'GRADY: I'm wondering if it didn't get mixed in with another file. I'll keep my eyes open for it.

CONSTANTINE ALEXANDER: Probably.

What date can we continue this case to?

SEAN O'GRADY: Fayerweather to May 28th.

CONSTANTINE ALEXANDER: May 28th. Okay.

The Chair moves that this case be moved to seven o'clock p.m. on May 28th on the condition that a -- the petitioner modify the sign and to indicate the new date at which time the hearing will be held.

All those in favor, please say "Aye."

(Show of hands).

CONSTANTINE ALEXANDER: Five in favor. Case is continued.

(Alexander, Sullivan, Hughes, Heuer, Firouzbakht.)

(Whereupon, a discussion was held off the record.)

(8:38 P.M.)

(Sitting Members: Constantine Alexander, Tim Hughes, Brendan Sullivan, Tad Heuer, Mahmood Firouzbakht.)

CONSTANTINE ALEXANDER: Is there anyone here in regard to 133 Pearl Street? You're here. That case is going to be continued, Ma'am. Or maybe you're the petitioner, I don't know.

FEMALE AUDIENCE MEMBER: No, I'm the abutter.

CONSTANTINE ALEXANDER: Okay.
The petitioner has requested a

continuance of the case. So, when we -- at the appropriate time, we will continue it. You'll hear the date to which it will be continued.

FEMALE AUDIENCE MEMBER: You don't have a date yet?

CONSTANTINE ALEXANDER: We can't take the case up yet because it's not time on the docket.

FEMALE AUDIENCE MEMBER: Oh, okay.

CONSTANTINE ALEXANDER: What's the date likely to be continued to?

SEAN O'GRADY: May 14th.

CONSTANTINE ALEXANDER: May 14th. So, it's likely -- you don't have to wait around. May 14th is when the case will be heard, at seven p.m.

FEMALE AUDIENCE MEMBER: Thank you very much.

(Whereupon, a discussion was held off the record.)

(8:40 P.M.)

(Sitting Members: Constantine Alexander, Tim Hughes, Brendan Sullivan, Tad Heuer, Mahmood Firouzbakht.)

CONSTANTINE ALEXANDER: The Chair will call Case No. 9767, 61 Lexington Avenue.

Anyone here wishes to be heard on that case?

SHANE BARON: Yes, please.

BLAKE ALLISON: These are copies of drawings. Can I just put them up here?

CONSTANTINE ALEXANDER: Copies of drawings that are in the file already?

BLAKE ALLISON: Yes.

My name is Blake Allison from

Dingman Allison Architects at 1950 Mass. Ave. And there are blow-ups of the plans back here and the elevations of the proposed addition. And it's a proposal to add on to an existing non-conforming building. It's on a very large lot, 10,000 square feet, but there are two conditions which make it non-conforming.

It's a little too tight to the side property line. It's just a shade over five feet, and zoning calls for 7.5. Also, the ridge of the existing building is a little over the height limit. It's -- I believe it's 38 and a half feet. So those conditions make it non-conforming.

The addition that we're proposing is conforming in all respects except two. One is that in order to fit in the third floor dormer, the ridge height of the dormer has to be also just a shade over the height, but that's to resolve the geometry to make enough head room. It's a

rather small dormer. We're trying to keep it to a minimum. But that height is required to make it work.

And the second thing is, the addition of the side porch brings us within ten feet of the existing garage which is really actually more like a storage building. It's a very narrow garage filled with kayaks and canoes and so on.

SHANE BARON: And bikes.

BLAKE ALLISON: Kids' toys.

So those are two conditions that need relief. And also the -- some windows on the north facade. We're deleting two and adding three. The FAR increase stays well under the limit. The intention of the owners is to keep this addition on the small side because they value the backyard tremendously as a play space. So we're trying to keep the additional volume to a minimum. About a third of the new FAR is

actually in the basement, which will just be the play room. And then some of the FAR is also in the two new porches and a mud room so that they'll have a good family entry in and out on the side that faces the driveway. Some of the square footage is on the second floor to create enough space for a master bedroom. And the remainder is on the first floor, which is to expand for a little bit of a seating area in the kitchen, seating and an eating area.

And lastly, the third floor dormer is very small amount of square footage, and that's to be able to tuck a bathroom in up there on the third floor.

I'll let Shane talk about the -- how he's dealt with all the neighbors.

CONSTANTINE ALEXANDER: I just want to make sure I understand. You're basically not -- you have a non-conforming structure based at least in terms of the

side lot line and height, too?

BLAKE ALLISON: Right.

CONSTANTINE ALEXANDER: And you're just extending the line of that structure farther into the rear yard?

BLAKE ALLISON: We're actually notching it in.

CONSTANTINE ALEXANDER: Notching it in?

BLAKE ALLISON: Yeah.

CONSTANTINE ALEXANDER: Okay.

BLAKE ALLISON: Right.

CONSTANTINE ALEXANDER: You're not getting any closer to the people who you're too close to now?

BLAKE ALLISON: That's right.

And also part of the footprint that we're expanding into is presently a deck and a bulkhead. So about two thirds of that, of the footprint of the addition is actually already built on. That's, again, this idea that we really don't want to

take up anymore of the backyard space. So we're trying to keep it all very tight.

CONSTANTINE ALEXANDER: I'm sorry to interrupt you.

SHANE BARON: No, that's fine.

BLAKE ALLISON: You have to give your name.

SHANE BARON: My name is Shane Baron S-h-a-n-e B-a-r-o-n.

As Blake said, the yard is very important to my wife and I. But we did feel a need for some extra space in the house. So before we started this process we had Blake draw up some plans. We went to all of our neighbors first, because we recognize that we were very close to some of our neighbors, and showed them some drawings and spoke to all of our neighbors first, especially the ones that -- on the non-conforming side. And, you know, verbally we got their blessing. And then once we had more formal plans and we

shared them with people, we actually passed this around and got all of our abutters' signatures as well as some people across the street, and people that could be affected by noise and view of construction. The one person we did not get is one abutter. His name is Michael Haney. He lives on Gracewood Park. We spoke to Michael in the fall -- actually him, his wife and child were in our yard. We explained what we were going to do. Unfortunately, when it was time to sign this paper, Michael hasn't been around. Apparently he's in Florida since December. I left messages for him. My wife and Blake as well. So we did have this conversation verbally. He was okay with it. Nothing has changed since then. But we haven't -- we weren't able to get him to sign this. But all of our other abutters and other neighbors --

CONSTANTINE ALEXANDER: Is Harriet

Provine one of the people who signed this?

BLAKE ALLISON: She wrote a letter to the Board, which I'll read into the record.

SHANE BARON: Okay. She could be on there. You know, my wife did that, I'll be perfectly honest. I'm not gonna lie.

TIM HUGHES: Is she that much more charming than you are, is that what it is?

SHANE BARON: Yes, She is.

CONSTANTINE ALEXANDER: But this is --

SHANE BARON: And then we also, once we posted our sign, we handed out -- we. Once again, my wife handed out a bunch of flyers to everyone kind of in the direct area, inviting them to come look at the plans, ask questions. And we didn't get any feedback that people had concerns about it. Whether or not people did or not, they didn't directly voice it to us.

BLAKE ALLISON: I just want to add that I put in a phone call to the abutter who we didn't get a chance for him to sign. Unfortunately when he called back, I wasn't in the office. But he left a message that he was away and would try to call back, but that was over -- that was about two weeks ago.

CONSTANTINE ALEXANDER: In any event, this person has received notice of the hearing. And if this person has comments to give, that he wanted us to hear, he would have -- he had an opportunity --

SHANE BARON: He could have written a letter.

BLAKE ALLISON: We just want the Board to know that those are all the signatures, minus one. But we do feel we've covered that base as well as we could.

CONSTANTINE ALEXANDER: And did

anybody refuse to sign this form?

SHANE BARON: No. No. We have a very nice relationship with our neighbors. We've been there for -- since 2005.

CONSTANTINE ALEXANDER: Questions from members of the Board?

BRENDAN SULLIVAN: I'd like to mention the dormer on the third floor is to be a bathroom for a one bedroom up there?

BLAKE ALLISON: There's actually two bedrooms up there.

BRENDAN SULLIVAN: Okay, there's two.

SHANE BARON: It does make the one bedroom -- the dormer will be shared between a bathroom and a bedroom. And there's a bedroom up there, but it actually doesn't have -- it has a very small window. And this would give us a window that would make it a legal bedroom as well in the back of the --

BLAKE ALLISON: If you look on the third floor plan, you'll see that the -- well, here (indicating).

CONSTANTINE ALEXANDER: With the plans that you've handed out tonight, are these the same plans that are in our file?

BLAKE ALLISON: Yes. Yes. That's right.

BRENDAN SULLIVAN: As far as --

BLAKE ALLISON: Well, I didn't print all of them.

BRENDAN SULLIVAN: There's no floor plans.

BLAKE ALLISON: Yeah, correct.

BRENDAN SULLIVAN: So then upstairs now existing there are two finished bedrooms, which is typical of those --

SHANE BARON: Yes. And like a little -- it's a bathroom with a claw foot tub and a toilet.

BLAKE ALLISON: This is the dormer

back here.

BRENDAN SULLIVAN: Yes.

BLAKE ALLISON: And one of the windows is for the bathroom. The other window, actually, it provides an egress window for this bedroom which has a very small window now. So, this is actually bringing it up towards a code, like safety.

BRENDAN SULLIVAN: Yes.

BLAKE ALLISON: We tucked it into the same dormer. Again, we tried to keep it as small as we could.

BRENDAN SULLIVAN: It's very typical of those houses anyway.

BLAKE ALLISON: This has a hip roof, so it's -- volumetrically it's as small as we can fit.

BRENDAN SULLIVAN: No, that's....

CONSTANTINE ALEXANDER: Other questions from members of the Board?

MAHMOOD FIROUZBAKHT: And is it

right that there's an additional area of relief is related to the distance between an expansion in the porch and the existing garage?

BLAKE ALLISON: Yes, that's right. We're coming -- the ordinance calls for ten feet. And we're coming within six -- the roof of this little porch here would be six-foot, three from the existing building. But this is a deal lower. This is one of those prefab metal Sears Roebuck kind of buildings. So it's quite -- it's low and small. But this way we can -- see, the driveway's here. So this will give them access from the driveway where they park the cars.

CONSTANTINE ALEXANDER: What would be the distance between the garage and the porch as you propose to build it?

BLAKE ALLISON: From the roof over part, it would be six-foot, three. And then there are two steps that come into

that. So right here it's going to be about four and a half feet. So it's enough to maintain a passageway through.

CONSTANTINE ALEXANDER: Passageway not for a vehicle though?

BLAKE ALLISON: No, no.

CONSTANTINE ALEXANDER: One of the reasons I believe for requiring a minimum distance between buildings on a lot is to allow fire equipment and the like to get there to --

BLAKE ALLISON: Right.

CONSTANTINE ALEXANDER: -- in case there's a need for that. And that would not be the case with only four feet in between.

BLAKE ALLISON: Right. Well, if they were seriously in need, they could push this building out of the way with their hands.

CONSTANTINE ALEXANDER: I guess you're right.

BLAKE ALLISON: This is very close to the back of the building anyhow. It's not like the building goes back another 50 feet from that point. In fact, from the corner of the garage you can see it only goes back about ten feet.

CONSTANTINE ALEXANDER: Other questions?

TAD HEUER: I have a question. In your form you say that there would be a need for windows within the side yard setback. Were those advertised for or is there a need? I'm just confused.

CONSTANTINE ALEXANDER: Well, the advertisement, I had some questions about that myself as in generally. They can construct an addition and they cite the sections that deal with dimensional requirements. So we typically in the past have allowed, so that's sufficient notice to cover the windows.

TAD HEUER: Right.

CONSTANTINE ALEXANDER: Or situations like that. I think the public has been put on notice that you're seeking dimensional relief.

BLAKE ALLISON: Right.

SHANE BARON: Right.

CONSTANTINE ALEXANDER: By the advertisement.

BLAKE ALLISON: Also, if you look at this elevation, you'll see that what's going on with the window change is pretty minor. And the abutters who are directly across here have --

CONSTANTINE ALEXANDER:
Mr. Heuer's comment is minor or not, you have to advertise the relief you're seeking.

BLAKE ALLISON: Right. Right.

CONSTANTINE ALEXANDER: And even if it were minor, but if it weren't sufficiently advertised, we wouldn't have the authority to hear the case on that

aspect tonight. But I think -- my view is that given the broad scope of the advertisement and the sections cited, I think you've given sufficient notice. That would be my view.

BRENDAN SULLIVAN: Technically relocating windows, adding windows in a side setback does require a Special Permit.

CONSTANTINE ALEXANDER: Special Permit, yes.

BRENDAN SULLIVAN: But the variance may be more restrictive. So, I think it's the policy of Inspectional Services that they've allowed it, being part of a variance, is okay, that a request to be a separate line item of a Special Permit is --

CONSTANTINE ALEXANDER: It would be different in the converse. In other words, if anyone here for a Special Permit --

BRENDAN SULLIVAN: For just the windows, it's a Special Permit.

CONSTANTINE ALEXANDER: Or something that requires a variance, we would require them to re-advertise. But this is a lesser relief that you're seeking. I mean, the variance is a broader relief than a Special Permit. That's been our policy and the Inspectional Services' Department policy.

MAHMOOD FIROUZBAKHT: And the applicant, I guess, would have to be okay with that, right? To approve that standard -- of the Board using that --

CONSTANTINE ALEXANDER: Right.

MAHMOOD FIROUZBAKHT: -- the variance standards as opposed to Special Permit standard in connection with the windows.

CONSTANTINE ALEXANDER: Yes. You would have to meet a tougher standard. And of course if there's a risk that was

not properly advertised because of the window relocation, and if an abutter was to challenge it, it's your risk. I mean, I suppose we could try to attack the jurisdiction or the jurisdiction to grant your risk relief. I think we're comfortable that we have the jurisdiction but we're not the final word on this.

BLAKE ALLISON: Right. But given the abutter in question here has given their signature saying they don't object, I think we're okay.

CONSTANTINE ALEXANDER: Any comments from the audience? Is there anybody -- I'll open it to public comments. I see two people in the audience. Do either of you have any interest in this case? No. Thank you. Public comments will be closed.

I'll read into the file a letter that we did receive. Handwritten letter from, it appears to be Harriet Provine

P-r-o-v-i-n-e who lives at 70 Lexington Avenue. It says: Because I am unable to attend the hearing this evening about case No. 9767, a few words. 61 Lexington Avenue is a lovely, old (the oldest house on Lexington Avenue?) house. It would be good to preserve it in its original, visible format and in its spacious setting as much as possible. I do not believe a side porch is architecturally correct. Even more important, having just suffered the effects of fire and water from the hoses due to the flaming house next-door, 72-74 Lexington, I oppose sacrificing the distance between buildings unless absolutely necessary. I think that a rear porch at 61 is not unreasonable. I very much appreciate the work you do and your help in trying to preserve my own damaged home. Thank you.

The praise is for us not for you.

BLAKE ALLISON: Oh.

CONSTANTINE ALEXANDER: That's the sum and substance of the public comment.

She does touch upon on something we just talked about, namely the distance between buildings. And again, if you want to address that as to why you don't think there's a fire hazard or concern?

SHANE BARON: Can I say something?

CONSTANTINE ALEXANDER: By all means.

SHANE BARON: A fire truck couldn't get passed through there now as it is. The way the old deck is there with the steps that come out, the fire truck is not getting through there right now. Whether or not that --

CONSTANTINE ALEXANDER: The safety is not being impaired. Whatever safety problems, it ain't worse.

SHANE BARON: It's not getting worse. I mean, I....

CONSTANTINE ALEXANDER: Comments
from members of the Board?

Ready for a motion?

TAD HEUER: I have --

CONSTANTINE ALEXANDER: Go ahead.

TAD HEUER: I support everything
you're doing. I support the motion. I
don't believe that there's -- personally I
don't think there's an advertisement to
cover the Special Permit for windows. So
in that regard that's a technical matter
having nothing to do with you guys.

But to the fellow members of the
Board I think I would say, I would prefer
to see it's an advertiseable issue that it
be advertised, and I'm not sure it comes
within a general purview of the variance,
quad variance of Article 10.

CONSTANTINE ALEXANDER: Okay.

I think when the time comes for a
vote, you can vote accordingly. I
appreciate your views.

I should also mention for the public record too, that the petitioner submitted to us -- I would call it a petition to the effect that we have reviewed the plans for the renovation of 61 Lexington Avenue prepared by Dingman and Allison Architect and dated December 17, 2008. We have no objections. And it's signed by the occupant at 51 Lexington Ave, Eight Gracewood Park, Seven Gracewood Park, 48 Lakeview, 48 Lexington, 54 Lexington, 38 Lexington, and Five Gracewood Park.

Where is Gracewood Park relative to --

SHANE BARON: Lexington basically runs parallel to Lakeview, and then there's a little cul-de-sac right next to -- off of Lexington and it's right there.

CONSTANTINE ALEXANDER: How close is that to your property, that cul-de-sac?

SHANE BARON: The cul-de-sac is not too far. The houses are in between us

and the cul-de-sac. That's where that non-conforming line is.

BRENDAN SULLIVAN: If you blink, you would go right by it.

CONSTANTINE ALEXANDER: Yeah, I went by it. Apparently I didn't see it.

BLAKE ALLISON: Those little stucco houses with the tile roofs.

BRENDAN SULLIVAN: Looks like you're pointing to someone's circular driveway.

CONSTANTINE ALEXANDER: Ready for a vote?

The Chair moves that a variance be granted to the petitioner to proceed with the work as advertised and is set forth in the plans, which I will later identify in my motion, on the grounds that a literal enforcement of the provisions of the ordinance would involve a substantial hardship. The hardship being is that the house needs additional living space. It's

a house that is a non-conforming structure. So any material modification to the structure requires zoning relief. And without that zoning relief, the ability to use the house as a single-family residence is impaired.

That the hardship is owing to the fact that this is a non-conforming structure, and that relief can be granted without detriment to the public good or nullifying or substantially derogating from the intent or purpose of the ordinance. There would be no substantial detriment because the non-conformance is just an extension of the side of the structure -- actually, not even an extension. It cuts back. But it is -- doesn't intrude any closer to the neighbors on the side. We know, too, that the neighborhood seems to almost unanimously support the project.

And so that the variance be granted,

however, on the condition that work proceed in accordance with the plans submitted by the --

BLAKE ALLISON: This is the full package. That's an abbreviated package. This is the full one that went in with the application.

CONSTANTINE ALEXANDER: The work proceed in accordance with plans prepared by Dingman Allison Architects.

I don't see a date. It looks like 12/17/2008 way down below.

BLAKE ALLISON: Yes, that's right.

CONSTANTINE ALEXANDER: The plans are initialed by the Chair, and they're numbered A0-0, A0-1, A0-2, A0-3, A2-2, A2-3, A2-4. And also accompanying elevations, all of which have been initialed by the Chair.

All those in favor of granting a variance on the basis, so moved, say

"Aye."

(Show of hands.)

CONSTANTINE ALEXANDER: Four in favor.

(Alexander, Hughes, Sullivan, Firouzbakht.)

CONSTANTINE ALEXANDER: All those opposed?

(None.)

CONSTANTINE ALEXANDER: All those abstaining?

(Heuer.)

CONSTANTINE ALEXANDER: One abstaining. Mr. Heuer abstains.

BLAKE ALLISON: That was because of the advertising issue?

TAD HEUER: Yes. I'm through.

BLAKE ALLISON: I just wanted to make sure.

Okay, thank you very much.

(Whereupon, a discussion was held off the record.)

BRENDAN SULLIVAN: The question is whether or not the location of some of the windows should have been advertised under a Special Permit?

SEAN O'GRADY: As opposed to being thrown in?

CONSTANTINE ALEXANDER: Yes.

SEAN O'GRADY: The technical answer is yes. It should be separated out. We tolerate the --

CONSTANTINE ALEXANDER: That's what we told the petitioner. I know in the past we've had this issue come up.

SEAN O'GRADY: Yes. We've been asked by the Legal Department not to do this. I've been informed that we still do it.

CONSTANTINE ALEXANDER: Well, something we should consider in future cases.

MAHMOOD FIROUZBAKHT: We just did.

TAD HEUER: We just did. Tell

them to call me, we can have a discussion.

CONSTANTINE ALEXANDER: The shame would be that the people come back with a Special Permit. It's a real technical issue.

SEAN O'GRADY: Yes, it is. And, you know, there's a certain set of facts where it would actually start to mount in the sense that they might not be able to back out of something or it can be appealed. Yes.

TIM HUGHES: The case, we were talking about a one for one swap, aren't we? Adding one, adding a tiny one but dumping one, too.

(9:00 P.M.)

(Sitting Members: Constantine Alexander,
Tim Hughes, Brendan Sullivan, Tad Heuer,
Mahmood Firouzbakht.)

CONSTANTINE ALEXANDER: The Chair
will call case No. 9768, 133 Pearl Street.

Is there anyone here wishing to be
heard on that case?

(No response).

CONSTANTINE ALEXANDER: The Chair

sees no one.

I see a waiver of notice of decision in the file. I don't think I see a letter again requesting it.

SEAN O'GRADY: We got a waiver though.

CONSTANTINE ALEXANDER: We got a waiver.

I think we'll proceed as we did before. When should we continue this case to or when can we continue it to?

SEAN O'GRADY: Yes. Please continue it to May 14th.

CONSTANTINE ALEXANDER: By the way, on this -- this is off the record.

(Whereupon, a discussion was held off the record.)

CONSTANTINE ALEXANDER: The Chair moves that the case be continued with regard to 133 Pearl Street until seven p.m. on May 14th on the condition that the sign advertising this hearing be modified

to show the new May 14th date.

All those in favor, please say
"Aye."

(Show of hands.)

CONSTANTINE ALEXANDER: Five in
favor. Case is continued.

(Alexander, Hughes, Sullivan, Heuer,
Firouzbakht.)

(Whereupon, a discussion was
held off the record.)

(9:05 P.M.)

(Sitting Members: Constantine Alexander, Tim Hughes, Brendan Sullivan, Tad Heuer, Mahmood Firouzbakht.)

CONSTANTINE ALEXANDER: The Chair calls case No. 9769, 8-10 St. Mary Road.

Is there anyone here wishing to be heard on this case?

Please, for the record, pronounce, spell your name and your address for the stenographer.

ROBERT HSIUNG: May name is Robert Hsiung H-s-i-u-n-g. Property 8-10 St. Mary Road.

JACQUELINE CHAI: Jacqueline Chai,
C-h-a-i. Same address.

CONSTANTINE ALEXANDER: And why
are you here?

ROBERT HSIUNG: We're asking for a
variance to put in two sky lights.

CONSTANTINE ALEXANDER: I don't
think you want a variance. Special
Permit?

TIM HUGHES: Special Permit.

ROBERT HSIUNG: Okay.

CONSTANTINE ALEXANDER: Okay.

My issue is -- issue. Your
dimensional form is puzzling me. I can't
figure out exactly why you need relief.
You say no, nothing has changed.

ROBERT HSIUNG: Yeah, I was kind
of puzzled as to why I needed a Special
Permit for this whole thing.

TAD HEUER: Where's Sean?

ROBERT HSIUNG: Apparently the
property is so tight there that the sky

lights are too close.

CONSTANTINE ALEXANDER: Sky lights are -- the Inspectional Services Department consider the sky lights to be windows.

ROBERT HSIUNG: Right.

CONSTANTINE ALEXANDER: And if you're too close to the lot line, you're doing windows in a setback. And therefore you need a Special Permit.

ROBERT HSIUNG: Okay.

CONSTANTINE ALEXANDER: So that's essentially it. But your dimensional form doesn't say that. At least I can't figure it out. Everything stays the same.

ROBERT HSIUNG: Yeah, I -- maybe I just filled it in wrong. I didn't understand.

CONSTANTINE ALEXANDER: Well, when Mr. O'Grady comes back in, if he comes back in. I'm going to ask you as part of granting -- if we grant you relief, to

modify the dimensional form, to a zoning point of view, the correct way so we have the right information in our files. But I think that is the issue before us.

ROBERT HSIUNG: I can tell you exactly the distance of the windows to the property line on each side and what it's supposed to be. I didn't see where I was supposed to write that on this form though. I can tell you that now.

CONSTANTINE ALEXANDER: Yes, please.

ROBERT HSIUNG: On the left side it will be seven feet from the property line. On the right side it will be 16 feet from the property line. According to the restrictions it's supposed to be 17.4.

TIM HUGHES: 17.5.

CONSTANTINE ALEXANDER: Or four. Okay.

Let me modify that. Rather than -- I can do it right now. On the left side

it's going to be what? Give me the numbers again.

ROBERT HSIUNG: Seven feet.

CONSTANTINE ALEXANDER: Seven feet.

ROBERT HSIUNG: And on the right side 16 feet. And it should be 17.4.

CONSTANTINE ALEXANDER: Right.

So you're seeking setback relief under a Special Permit, which is not as the standards as the owner of the offer of variance. It's much easier to get the relief that you're seeking.

TAD HEUER: I suggest that --

CONSTANTINE ALEXANDER: Yes.

I guess the case is pretty self-explanatory beyond that. These are your plans here?

ROBERT HSIUNG: Yeah.

CONSTANTINE ALEXANDER: In the file. And if we grant your relief, you have to proceed in accordance with these

plans.

ROBERT HSIUNG: Absolutely.

CONSTANTINE ALEXANDER: If you change them afterwards, you have to come back before us. So you're comfortable that this is it?

ROBERT HSIUNG: Okay.

CONSTANTINE ALEXANDER: Questions from any members of the Board?

TIM HUGHES: No.

CONSTANTINE ALEXANDER: Is there anybody here wishes to be heard?

(No response.)

CONSTANTINE ALEXANDER: Nothing better to do tonight or what?

MALE AUDIENCE MEMBER: Mine is going to be next week. I just want to hear what the issues are.

TIM HUGHES: Research?

CONSTANTINE ALEXANDER: Okay.

I don't think there's any correspondence, anything in the file from

anybody.

BRENDAN SULLIVAN: Are you educating yourself is that what it is?

JACQUELINE CHAI: So we still have to modify this form?

CONSTANTINE ALEXANDER: No, you're okay.

ROBERT HSIUNG: Just so I know the next time I do this, if I have to.

CONSTANTINE ALEXANDER: Hope you're not back here.

ROBERT HSIUNG: Well, if I get a new property -- what am I supposed to do?

TIM HUGHES: I really think this form is designed to talk about moving walls and building walls and it's not clear.

JACQUELINE CHAI: Like a narrative down here or something.

CONSTANTINE ALEXANDER: Next time, if you do a next time, talk to Sean and he'll help you do it right. But basically

you had a setback issue because you were too close to the lot line. Your windows would be closer than the zoning required.

BRENDAN SULLIVAN: And it doesn't comply. It doesn't comply easily.

JACQUELINE CHAI: Oh, okay. We were a bit puzzled.

CONSTANTINE ALEXANDER: Ready for a vote? I hope we are.

The Chair moves that a Special Permit be granted to the petitioner to allow the relief being sought.

The Special Permit would be granted on the grounds that you cannot meet the requirements of the zoning ordinance because you have a non-conforming structure that is already too close to the lot line.

That we know increase in traffic as a result of these sky lights or patterns of access or egress would result that would cause congressional, hazard or

substantial change in neighborhood character.

That these sky lights would not affect the continued operations of or development of adjacent uses. And that you would not create a nuisance or hazard to the detriment of the health, safety and welfare of the occupant or the proposed use or the citizens of the city. And that what you're proposing to do would not impair the integrity of the district or the adjoining district.

All of this resulting of the fact that you're talking about building two sky lights which would have no impact on the privacy of any of your neighbors since they look up towards the sky. And that otherwise we're talking about modest relief that results from the fact that you have a non-conforming structure. Which means almost any relief -- any construction you would like to do requires

some sort of zoning relief.

The Special Permit would be granted on the condition that the work would proceed in accordance with the plans submitted by you. The four pages, four pages of the plans, all of which have been initialed by the Chair. That's the only designation they have.

All those in favor of granting the Special Permit on the basis, so moved, say "Aye."

(Show of hands.)

CONSTANTINE ALEXANDER: Five in favor. Variance has been granted. Good luck.

(Alexander, Hughes, Sullivan, Heuer, Firouzbakht.)

JACQUELINE CHAI: Thank you.

(Whereupon, a discussion was held off the record.)

(Whereupon, at 9:10 p.m., the meeting was concluded.)

C E R T I F I C A T E

**COMMONWEALTH OF MASSACHUSETTS
BRISTOL, SS.**

I, Catherine Lawson Zelinski, a
Certified Shorthand Reporter, the
undersigned Notary Public, certify that:

I am not related to any of the
parties in this matter by blood or
marriage and that I am in no way
interested in the outcome of this matter.

I further certify that the testimony
hereinbefore set forth is a true and
accurate transcription of my stenographic
notes to the best of my knowledge, skill
and ability.

IN WITNESS WHEREOF, I have hereunto
set my hand this 23rd day of April, 2009.

Catherine L. Zelinski
Notary Public
Certified Shorthand Reporter
License No. 147703

My Commission Expires:
April 23, 2015

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